

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Devaney	Team: Squad #4	CCRB Case #: 201905733	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/28/2019 7:55 PM	Location of Incident: § 87(2)(b) 34th Precinct stationhouse	Precinct: 34	18 Mo. SOL 12/28/2020	EO SOL 8/14/2021	
Date/Time CV Reported Mon, 07/01/2019 11:38 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/01/2019 11:38 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Catherine Coyle	18738	958445	034 PCT
2. POM Brian Eshak	09746	960504	034 PCT
3. SGT Hekmatulla Mukhtarzada	03383	949517	034 PCT
4. SGT Zulfiqar Ahmed	01226	934693	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Dominit Mejia	01810	945384	034 PCT
2. POM Daniel Wynne	11292	962083	034 PCT
3. POF Maria Munive	21506	959834	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Catherine Coyle	Abuse: Police Officer Catherine Coyle entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
B.POM Brian Eshak	Abuse: Police Officer Brian Eshak entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
C.SGT Zulfiqar Ahmed	Abuse: Sergeant Zulfiqar Ahmed entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
D.SGT Zulfiqar Ahmed	Abuse: At § 87(2)(b) Sergeant Zulfiqar Ahmed threatened to arrest § 87(2)(b)	§ 87(2)(b)
E.POM Brian Eshak	Abuse: At the 34th Precinct stationhouse, Police Officer Brian Eshak searched § 87(2)(b)	§ 87(2)(b)
F.POM Brian Eshak	Abuse: At the 34th Precinct stationhouse, Police Officer Brian Eshak seized § 87(2)(b) property.	§ 87(2)(b)
G.SGT Hekmatulla Mukhtarzada	Abuse: At the 34th Precinct stationhouse, Sergeant Hekmatulla Mukhtarzada threatened to arrest § 87(2)(b)	§ 87(2)(b)

Case Summary

On July 1, 2019, § 87(2)(b) filed this complaint with the CCRB by phone.

On June 28, 2019, at approximately 7:55 p.m., § 87(2)(b) was in her home at § 87(2)(b) in Manhattan when 34th Precinct Police Officers Catherine Coyle and Brian Eshak knocked on her door. § 87(2)(b) answered the door, and PO Coyle informed § 87(2)(b) that she was violating an order of protection obtained by § 87(2)(b) § 87(2)(b) son, who was in the building hallway at the time. PO Coyle and PO Eshak entered the apartment (**Allegations A-B: Abuse of Authority**, § 87(2)(g) § 87(2)(b) showed PO Coyle and PO Eshak orders of protection that she had against § 87(2)(b) PO Coyle and PO Eshak called their supervisor, 34th Precinct Sergeant Zulfiqar Ahmed, to the location. Sgt. Ahmed arrived and entered § 87(2)(b) apartment (**Allegation C: Abuse of Authority**, § 87(2)(g) § 87(2)(b) Sgt. Ahmed threatened to arrest § 87(2)(b) if she did not come with the officers to the stationhouse (**Allegation D: Abuse of Authority**, § 87(2)(g) § 87(2)(b) and § 87(2)(b) were arrested for violating the orders of protection and brought to the 34th Precinct stationhouse. At the stationhouse, PO Eshak removed § 87(2)(b) keys from inside her purse and gave them to § 87(2)(b) upon his release (**Allegation E-F: Abuse of Authority**, § 87(2)(g) § 87(2)(b) was subsequently released. As § 87(2)(b) was leaving the stationhouse, Sergeant Hekmatulla Mukhtarzada, from the 34th Precinct, allegedly threatened to arrest § 87(2)(b) (**Allegation G: Abuse of Authority**, § 87(2)(g) § 87(2)(b).

The investigation obtained three of the four body-worn camera (BWC) videos taken by officers at the scene, including witness officer, Police Officer Maria Munive from the 34th Precinct (Board Review 01-03). The Legal Bureau partially redacted the three videos and refused to provide a fourth because of a sealed arrest. The investigation obtained stationhouse footage that did not capture the FADOs alleged (Board Review 04-09).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Catherine Coyle entered § 87(2)(b) in Manhattan.

Allegation (B) Abuse of Authority: Police Officer Brian Eshak entered § 87(2)(b) in Manhattan.

It is undisputed that § 87(2)(b) and § 87(2)(b) reside at § 87(2)(b) in Manhattan, and that both have orders of protection against each other. § 87(2)(b) called 911 to report that § 87(2)(b) was inside of the apartment. PO Coyle and PO Eshak responded to the location first, and then Sgt. Ahmed.

§ 87(2)(b) testified that upon answering the door, PO Coyle immediately walked through the doorway, past § 87(2)(b) and into the apartment (Board Review 10). PO Coyle did not ask to enter, nor did § 87(2)(b) tell PO Coyle to enter. § 87(2)(b) denied making any physical gesture signaling for PO Coyle to enter. § 87(2)(b) retrieved an order of protection from her bedroom and when she returned to the hallway, PO Eshak was also inside the apartment. After speaking for a few minutes about the situation, PO Coyle and PO Eshak exited the apartment and bolted the door such that it would not fully close.

PO Coyle and PO Eshak both testified that § 87(2)(b) was outside the building when they arrived (Board Review 11-12, respectively). § 87(2)(b) told PO Coyle and PO Eshak that § 87(2)(b) was violating an order of protection by being inside the apartment, and he showed PO Coyle and PO Eshak an order of protection consistent with this claim. PO Coyle, PO Eshak, and § 87(2)(b)

entered the building and approached § 87(2)(b) PO Coyle and PO Eshak knocked on the door, and § 87(2)(b) opened it.

PO Coyle testified that § 87(2)(b) gestured for the officers to enter the apartment by waving her hand back toward herself and the interior of the apartment (Board Review 11). PO Coyle entered into the apartment's hallway and told § 87(2)(b) that § 87(2)(b) had an order of protection excluding her from the home. § 87(2)(b) provided PO Coyle with her own order of protection that stated § 87(2)(b) was not permitted in the apartment. PO Coyle decided to call her supervisor to the scene. PO Coyle did not recall if PO Eshak entered the apartment.

PO Eshak's testimony was consistent with PO Coyle's except that he did not have an independent recollection of PO Coyle or himself entering the apartment (Board Review 12).

Although the body-worn camera (BWC) videos from PO Coyle are partially redacted, the first BWC video clearly showed the beginning of PO Coyle and PO Eshak's interaction with § 87(2)(b) starting at the 10:54 minute-mark of the player's timestamp (Board Review 01). At 11:01, § 87(2)(b) answered the door and made a gesture with her right hand, waving toward the inside of the apartment. At 11:09, PO Coyle and PO Eshak entered the apartment. PO Coyle appeared to engage the bolt on the door, as there was a clicking sound at this point in the video, but the video did not explicitly capture this. PO Coyle and PO Eshak spoke with § 87(2)(b) inside the apartment. § 87(2)(b) answered PO Coyle and PO Eshak's questions and provided paperwork to them. As she conversed with the officers, § 87(2)(b) moved throughout the apartment. PO Coyle exited and reentered the apartment at 15:03 by pushing open the door which was not fully closed. PO Coyle informed § 87(2)(b) that she was going to request a sergeant to the scene.

While the video's picture and sound are periodically redacted for the remainder of the video, the BWC did not capture § 87(2)(b) revoking her consent or otherwise telling PO Coyle and PO Eshak to leave the apartment.

§ 87(2)(b) was ultimately handcuffed in the hallway outside the apartment, as shown at the 19:42 minute-mark of PO Coyle's second BWC video (Board Review 02). It was unclear how § 87(2)(b) came to be outside the apartment because of the video redactions.

This video evidence confirms PO Coyle's testimony that § 87(2)(b) made a physical hand gesture for the officers to enter the apartment.

Payton v. New York (445 U.S. 573) prohibits police officers from making warrantless and nonconsensual entry into an individual's home without exigent circumstances (Board Review 14). However, officers may enter a home with verbal or tacit consent, as established in People v. Hoffman, 158 A.D.3d 1178 (Board Review 15). In this case, it was found that the defendant voluntarily consented to the entry of the police officers after the defendant opened the door, retreated into the apartment with the door wide open, and, for the remainder of the encounter, cooperated with the officers and did not object to their presence in his home. Specifically, the physical hand gesture of beckoning officers into an apartment was found to be an example of implicit consent, as evidenced in Matter of Gilbert M., 127 A.D.3d 642 (Board Review 16).

In this case, § 87(2)(b) gestured for PO Coyle and PO Eshak to enter the apartment and then retreated into the apartment to discuss the conflicting orders of protection. § 87(2)(b) did not object to PO Coyle and PO Eshak being in her home for the remainder of the encounter. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Sergeant Zulfiqar Ahmed entered § 87(2)(b) in Manhattan.

§ 87(2)(b) testified that approximately 30 minutes after PO Coyle and PO Eshak spoke with her, Sgt. Ahmed pushed the door open and entered the apartment (Board Review 10). Sgt. Ahmed entered the apartment without asking for permission. § 87(2)(b) spoke to Sgt. Ahmed inside the apartment.

PO Coyle's first BWC video showed that PO Coyle reentered the apartment and informed § 87(2)(b) that she was going to request a sergeant to the scene, as shown at the 15:03 minute-mark (Board Review 01). § 87(2)(b) did not appear to make any comment about PO Coyle's remark.

PO Coyle's second BWC video showed Sgt. Ahmed arrived at the scene at the 4:00 minute-mark (Board Review 02). PO Coyle handed Sgt. Ahmed the court documents from § 87(2)(b) and § 87(2)(b). PO Coyle said that both § 87(2)(b) and § 87(2)(b) names were on the apartment lease. PO Coyle did not articulate that § 87(2)(b) gave permission for her and PO Eshak to enter the apartment. PO Coyle exits the building to make a phone call at 9:13 and reenters at 12:30. PO Coyle opened the apartment door and handed the phone to Sgt. Ahmed who was speaking with § 87(2)(b) and PO Munive inside the apartment. The video did not capture how Sgt. Ahmed came to be inside the apartment. § 87(2)(b) can be heard telling Sgt. Ahmed that Safe Horizon recently changed the lock on the door. The video did not capture if § 87(2)(b) asked officers to leave or otherwise revoked consent for officers to enter. PO Coyle exited the apartment, and the screen and sound were once again redacted. The picture and audio returned at the 12:54 minute-mark. § 87(2)(b) was outside the apartment standing in the hallway with the officers. The officers arrested § 87(2)(b).

Sgt. Ahmed testified that he arrived at the scene and saw that the apartment door was ajar (Board Review 13). He did not know if PO Coyle or PO Eshak had entered the apartment. Sgt. Ahmed entered the apartment to speak with § 87(2)(b). Sgt. Ahmed did not recall if § 87(2)(b) gave verbal or physical consent for him to enter. Sgt. Ahmed did not recall the conversation with § 87(2)(b) inside the apartment.

As detailed above, Payton v. New York, 445 U.S. 573 prohibits police officers from making warrantless entry into an individual's home without consent or exigent circumstances (Board Review 14).

§ 87(2)(g)

The standard for measuring the scope of an individual's consent pertaining to a particular area is that of objective reasonableness, see People v. Mitchell, 211 A.D.2d 553 (Board Review 17). In People v. Ortiz, 2001 N.Y. Misc., the court applied this standard to measure the scope of consent pertaining to certain police officers (Board Review 18). In this case, three officers entered the home of the defendant based on the lawful consent of another occupant of the home. One of the officers called out to a fourth officer who had been waiting outside the building with the complainant. The fourth officer entered the home with the complainant who positively identified the defendant as her assailant. The court found that, based on objective reasonableness, the consent to the entry of three police officers into the apartment did not constitute an open invitation for additional police officers or civilians to enter the home at a later time for the purposes of making an identification. The court

did not uphold the complainant's identification based on its ruling that the fourth officer had no legal authority to enter the home.

According to People v. Ortiz, § 87(2)(b) consent for PO Coyle and PO Eshak to enter her apartment did not extend to Sgt. Ahmed. § 87(2)(g)

Allegation (D) Abuse of Authority: At § 87(2)(b) Sergeant Zulfikar Ahmed threatened to arrest § 87(2)(b)

§ 87(2)(b) provided the CCRB with all orders of protection against both herself and § 87(2)(b) of which two of these orders were valid and exclusionary at the time of incident § 87(2)(b)

§ 87(2)(b) testified that Sgt. Ahmed told § 87(2)(b) that she would need to come to the police stationhouse to "clear up" the matter (Board Review 10). When § 87(2)(b) refused, Sgt. Ahmed said, "You need to leave with me now. If you refuse, you're going to be forced. I will handcuff you to take you to the station." § 87(2)(b) agreed to go with the officers to the stationhouse. § 87(2)(b) exited the apartment, and PO Coyle and Sgt. Ahmed immediately handcuffed her. § 87(2)(b) asked, "Am I under arrest?" PO Coyle and Sgt. Ahmed both told § 87(2)(b) that she was not under arrest but that she was handcuffed for their safety. § 87(2)(b) was transported to the stationhouse.

Sgt. Ahmed testified that both § 87(2)(b) and § 87(2)(b) were considered under arrest at the time because both were in violation of an order of protection (Board Review 13). Sgt. Ahmed did not recall what he said to § 87(2)(b) however, he explained during his CCRB interview that it is his practice to inform individuals in cases like this that they will be handcuffed and removed to the precinct stationhouse.

None of the BWC videos capture whether Sgt. Ahmed told § 87(2)(b) that she would be handcuffed and brought to go to the stationhouse (Board Review 01-03).

PO Coyle's second BWC video captures PO Coyle and PO Munive handcuffing § 87(2)(b) as shown at the 19:42 minute-mark, but it does not capture if § 87(2)(b) asked if she was under arrest or the officers' response (Board Review 02).

PO Coyle and PO Eshak testified that both § 87(2)(b) and § 87(2)(b) were arrested and brought to the 34th Precinct stationhouse (Board Review 11-12, respectively). After investigating the validity of the orders of protection, PO Eshak testified that he voided the arrests and released § 87(2)(b) and § 87(2)(b) from the stationhouse (Board Review 12).

The investigation obtained a copy of § 87(2)(b) voided arrest which confirmed § 87(2)(b) was arrested at § 87(2)(b) for violating an order of protection, Penal Law 215.50 (Board Review 20).

A person is guilty of criminal contempt in the second degree, Penal Law §215.50, when they engage in the intentional disobedience or resistance to the lawful mandate of a court (Board Review 28).

§ 87(2)(g)

Allegation (E) Abuse of Authority: At the 34th Precinct stationhouse, Police Officer Brian Eshak searched § 87(2)(b)

Allegation (F) Abuse of Authority: At the 34th Precinct stationhouse, Police Officer Brian Eshak seized § 87(2)(b) property.

It is undisputed that § 87(2)(b) and § 87(2)(b) arrests were voided and both individuals were released from the stationhouse that night. Upon § 87(2)(b) and § 87(2)(b) release, PO Eshak removed § 87(2)(b) apartment keys from inside her bag and gave the keys to § 87(2)(b).

PO Eshak testified that he believed the orders of protection proved that § 87(2)(b) was the rightful proprietor of the apartment (Board Review 12). PO Eshak went into § 87(2)(b) purse and took the apartment keys from an outer pocket of the bag. PO Eshak gave § 87(2)(b) apartment keys to § 87(2)(b) for § 87(2)(b) to access the apartment and for no other reason. PO Eshak did not prepare any documents related to this incident except for the voided arrest reports.

The arrest report for § 87(2)(b) did not list any invoices or vouchers for her property (Board Review 20).

This action was not captured on BWC or stationhouse videos (Board Review 01-03, Board Review 04-09, respectively).

People v. Ramirez-Portoreal, 88 N.Y.2d 99, states that constitutional protections against unreasonable searches and seizures extend to an item or container such as a bag where a person may have a legitimate expectation of privacy (Board Review 21). Furthermore, according to United States v. Jacobsen, 466 U.S. 109, government agents may not search or seize property without obtaining a warrant (Board Review 22).

§ 87(2)(g)

Allegation (G) Abuse of Authority: At the 34th Precinct stationhouse, Sergeant Hekmatulla Mukhtarzada threatened to arrest § 87(2)(b)

§ 87(2)(b) testified that upon leaving the stationhouse, Sgt. Mukhtarzada told her, “You better not go to § 87(2)(b) Street. If I get a 911 call for you, I’m personally going to be the one to come arrest you,” (Board Review 10). § 87(2)(b) then left the stationhouse.

This interaction was not captured on any BWC or stationhouse videos (Board Review 01-03, Board Review 04-09, respectively).

Sgt. Mukhtarzada testified that he largely did not recall this incident (Board Review 23). Sgt. Mukhtarzada spoke with § 87(2)(b) for approximately 15 or 20 minutes, but he did not recall what was said or why § 87(2)(b) was at the stationhouse. Sgt. Mukhtarzada denied telling § 87(2)(b) that he would arrest her.

Neither PO Coyle, PO Eshak, or Sgt. Ahmed recalled any interaction between Sgt. Mukhtarzada and § 87(2)(b) (Board Review 11-13, respectively).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- Police Officer Catherine Coyle has been a member of service for five years and has been a subject in one additional CCRB complaint and one allegation (Board Review 25):
 - 202001293 involves an allegation of physical force. To date, this investigation is still open.
 - § 87(2)(g)
- Police Officer Brian Eshak has been a member of service for five years, and this is the only CCRB complaint to which he has been a subject (Board Review 25).
- Sergeant Zulfiqar Ahmed has been a member of service for 16 years and has been a subject in two CCRB complaints and three allegations, none of which were substantiated (Board Review 25). § 87(2)(g)
- Sergeant Hekmatulla Mukhtarzada has been a member of service for ten years and has been a subject in six CCRB complaints and ten allegations, none of which were substantiated (Board Review 25). § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 30, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 26).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 4

Investigator:


Signature

Inv. Devaney
Print Title & Name

01/25/2021
Date

Squad Leader: Raquel Velasquez
Signature

IM Raquel Velasquez
Print Title & Name

01/26/2021
Date

Reviewer:

Signature

Print Title & Name

Date